

Application No. : 10/660,945
Filed : September 12, 2003

REMARKS

Claims 1 – 5 and 11 – 29 were pending in the application. By this paper, Applicant has amended Claims 1 and 26, canceled Claims 11 – 13, 18 – 21, and 23 – 25 without prejudice, and added new Claims 30 – 44. Accordingly, Claims 1 – 5, 14 – 17, 22, and 26 – 44 are presented for examination herein.

Priority

Per paragraph 3 of the Office Action, the Examiner had indicated that the application is a continuation of co-pending United States Patent Application Serial No. 09/429,233, filed October 28, 1999. However, per Applicant's previous response, the aforementioned Application is no longer co-pending, as it has now issued as U.S. Patent No. 6,691,096.

Double Patenting Rejection

The Examiner has rejected Claims 1 – 5 and 11 – 13 on the ground of non-statutory double patenting over Claims 1 – 4 and 9 – 13 of U.S. Patent No. 6,691,096. With regards to Claims 1 – 5 Applicant herein respectfully requests that the Examiner hold all double patenting rejections in abeyance until newly amended Claim 1 has been fully considered. With regards to Claims 11 – 13, Applicant has herein canceled Claims 11 – 13 without prejudice thereby rendering the Examiner's double patenting rejection of these claims moot.

Restriction

By this paper, and without comment as to the propriety of the Examiner's constructive restriction, Applicant elects without traverse the claims of the originally presented invention per Page 4 of the Office Action. Accordingly, Applicant herein cancels Claims 19 – 21 and 23 – 25 without prejudice. Applicant submits that all claims presented herein for examination (including new Claims 30 – 44) read on the originally presented and constructively elected invention.

§112 Rejections

Claims 17, 22 and 28 – Per page 5 of the Office Action, Claims 17, 22 and 28 each stand rejected as being indefinite under 35 U.S.C. 112, second paragraph. Specifically, the Examiner

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alleges the limitation "AV/C general specification" lacks sufficient antecedent basis. Applicant respectfully traverses.

As is well settled, *"the failure to provide explicit antecedent basis for terms does not always render a claim indefinite. If the scope of a claim would be reasonably ascertainable by those skilled in the art, then the claim is not indefinite."* {emphasis added} See e.g. MPEP § 2173.05(e). Applicant submits that the term "AV/C General specification" is the name given to a well known standard familiar to one of ordinary skill. See also paragraph [0007] of Applicant's specification as filed. Further, the Examiner has respectfully proffered no proof of any kind that such term is *not* well known to those of ordinary skill.

Moreover, there is no requirement that the words in the claim must match those used in the specification disclosure. Applicants are given a great deal of latitude in how they choose to define their invention so long as the terms and phrases used define the invention with a reasonable degree of clarity and precision. MPEP § 2173.05(e). Applicant submits that it has readily met such standard of clarity and precision through its use of the term "AV/C General specification".

§102 Rejections

Per paragraph 15 of the Office Action, Claims 1 – 5, 11 – 18, 22 and 26 – 29 each stand rejected as being anticipated by Looney et al. (U.S. Patent No. 6,232,539, hereinafter "Looney").

Claim 1 – Applicant has herein amended Claim 1 to include a limitation relating to the recited device requesting data accessing individual ones of the plurality of containers, thereby accessing portions of the audio visual control descriptor data without having to access all of said audio visual control descriptor data. Support for Applicant's amendment can be found, *inter alia*, at paragraph [0054] of Applicant's specification as filed (discussing the ability to obtain the desired information without having to access all of the data).

Although Looney is not explicit on the subject (as Looney appears unconcerned with the problem Applicant's amended Claim 1 invention is attempting to solve), Looney appears to teach quite the opposite of Applicant's Claim 1 invention as amended. Namely, Looney states:

"At any time, a portion of the current search list 451 is displayed, showing the various depicted categories such as title, artist, publication date,

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music category music style, dance type, music speed and energy in row-and-column form. The search list represents the selections located by pressing one or more category buttons. Songs from the search list can be appended to the end of the play list 430 by, for example clicking on their entry in the search list 451." Col. 9, lines 48 – 55. {Emphasis added}.

In other words, Looney appears to imply access to all of the various depicted categories. Hence, Applicant submits that Claim 1 as amended herein cannot as a matter of law be anticipated by Looney.

Claim 11 – Applicant has herein canceled Claim 11 without prejudice thereby rendering the Examiner's rejection of Claim 11 moot.

Claim 22 – With regards to Claim 22, Applicant respectfully traverses the Examiner's contention that Claim 22 is anticipated by Looney.

As is well known, in order to anticipate a given claim, every limitation of the claim must be present, either expressly or inherently, in a single prior art reference. See e.g., MPEP § 2131. In the present case, Applicant submits that Looney does not teach nor remotely suggest, *inter alia*, "an audio visual control general descriptor compliant with the AV/C general specification" as recited in Claim 22. It is Applicant's belief that Looney has not taught nor suggested any sort of descriptor compliant with the AV/C general specification, let alone an audio visual control general descriptor compliant with the AV/C general specification and therefore, as a matter of law, cannot anticipate Applicant's Claim 22 invention. Applicant respectfully requests clarification from the Examiner.

Claim 26 – Applicant has herein amended Claim 26 to include limitations relating to the recited plurality of containers each comprising one or more data fields of an audio visual control descriptor data, wherein a first data field in a first one of said plurality of containers comprises a static data field and a second data field in a second one of said plurality of containers comprises a dynamic data field. Support for Applicant's amendment can be found, *inter alia*, at paragraph [0008] of Applicant's specification as filed. Further background discussion can also be found at e.g. paragraph [0057] of Applicant's specification as filed.

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Applicant respectfully submits that Looney does not appear to teach both "*a static data field*" and a "*dynamic data field*". Therefore, Applicant submits that Claim 26 as amended distinguishes Claim 26 over the prior art, including Looney.

5 *New Claims*

Applicant has herein added new Claims 30 – 44. Support for these newly added Claims can be found, *inter alia*, as subject matter present in Applicant's originally filed claims as well as within paragraphs [0008], and [0054] – [0058] of Applicant's specification as filed. Therefore, Applicant submits that new Claims 30 – 44 are supported in Applicant's specification as filed
10 and hence introduce no new matter. Moreover, these new claims are neither independent nor distinct from, and are rightfully examined with, the now pending (constructively elected) claims.

Power of Attorney

Applicant includes herewith a duly executed Power of Attorney compliant with 37 CFR
15 §1.32 authorizing the undersigned to prosecute the present application.

Other Remarks

Applicant hereby specifically reserves all rights of appeal (including those under the Pre-Appeal Brief Pilot Program), as well as the right to prosecute claims of different scope in another
20 continuation or divisional application.

Applicant notes that any claim cancellations or additions made herein are made solely for the purposes of more clearly and particularly describing and claiming the invention, and not for purposes of overcoming art or for patentability. The Examiner should infer no (i) adoption of a position with respect to patentability, (ii) change in the Applicant's position with respect to any
25 claim or subject matter of the invention, or (iii) acquiescence in any way to any position taken by the Examiner, based on such cancellations or additions.

Furthermore, any remarks made with respect to a given claim or claims are limited solely to such claim or claims.

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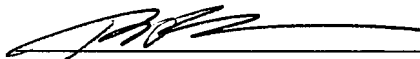
If the Examiner has any questions or comments which may be resolved over the telephone, he is requested to call the undersigned at (858) 675-1670.

Respectfully submitted,

GAZDZINSKI & ASSOCIATES

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